



September 20, 2021

VIA ELECTRONIC MAIL

To: PROF SURYA DEVA, Chair, Working Group on the issue of human rights and transnational corporations and other business enterprises,  
MS IRENE KHAN, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,  
MS MARY LAWLOR, Special Rapporteur on the situation of human rights defenders  
MR CLÉMENT NYALETSSOSSI VOULE, Special Rapporteur on the rights to freedom of peaceful assembly and of association

CC: PROF FIONNUALA NÍ AOLÁIN, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

c/o: MR KARIM GHEZRAOUI, Officer-in-Charge, Special Procedures Branch, OHCHR  
registry@ohchr.com

United Nations Human Rights Office of the High Commission  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

Re: **Joint Communication from Special Procedures**

### *Introduction*

NSO Group Technology (“NSO”) writes in response to your joint letter dated August 4, 2021, and further to our initial response by email dated August 5, 2021 in which we reiterated NSO’s commitment to constructive dialogue with the UN Special Procedures, the Office of the High Commissioner for Human Rights (“OHCHR”) and all stakeholders. We welcome your letter, the invitation to build upon our recent engagement with the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the opportunity to address matters relating to the “Pegasus Project” report published on and after 18 July 2021 (“Report”).

Despite the fact that we have identified serious shortcomings and material inaccuracies with the reporting campaign against NSO on which your letter is predicated, NSO always takes extremely seriously all allegations that its products are involved in any human rights adverse impact. Any accusation that Pegasus has been misused by a State or State agency to target any journalist, human rights defender or political leader in violation of their human rights is naturally very concerning. In response to the allegations reported, NSO immediately started a thorough review process and launched investigations into the reported claims, which is ongoing. We provide some further information below, and will continue to report once our investigations are complete.



We restate again that NSO recognises fully its responsibility to respect human rights as well as the fact that, as clearly articulated in the UN Guiding Principles on Business and Human Rights (“UNGPs”), this responsibility does not in any way alter or diminish the human rights obligations of States. Indeed, while most of the attention has been on our company, little has been said to address the actual alleged perpetrators of the human rights violations mentioned in the Report.

This is why we reiterate, in addition to our own commitment to ever more fully meet our responsibility, our strong support for the creation of an international legal framework and sector-specific standards as well as guidelines to better determine criteria for legitimate end users of these crucial types of systems. In our view, this is critical to guide and regulate the use of surveillance tools by States and State agencies for legitimate law enforcement and national security aims, and to establish ground rules regarding transparency and the provision of remedy when appropriate. Achieving this is beyond the scope of private companies’ efforts alone, and properly requires the direction and oversight of a democratic and public political process, as well as international institutions, including the UN.

This regulatory framework should also oblige businesses in this industry – and ideally technology providers to Governments generally – to have and to operate human rights compliance systems to enhance right protection across the board while also constructing a level playing field.

Together with other international organizations, the United Nations, including the Special Procedures, are well placed to convene a multilateral and multi-stakeholder dialogue to explore such an initiative and discuss matters raised in the Report. NSO is committed to being a constructive participant if given the opportunity. We expand upon this suggestion, and renew our offers to engage with the Special Procedures, below.

### *NSO and human rights*

First and foremost, it is important to restate that, as recognised in the UN High Commissioner’s statement of July 19, 2021 and the reference in your letter to Articles 17 and 19 of the International Covenant on Civil and Political Rights (“ICCPR”), surveillance measures can be justified in certain circumstances. NSO’s technology has a legitimate purpose in a modern world where terrorists and serious criminals can hide their illegal and harmful activity from law enforcement through widely available encryption and other technologies.

End-to-end encryption is a useful technology for, and can often contribute to, the enjoyment of human rights. However, it should be recognised that misuse of this technology can also be a potential threat that enables severe rights violations. Everyday terrorist and criminal factions misuse end-to-end encryption to communicate and conspire in a secure manner to further their criminal activities. NSO’s technologies are being used every day to overcome encryption in order to break-up sex-, drug- and human-trafficking rings, to tackle paedophilia rings, to locate missing and kidnapped children, to rescue survivors from collapsed buildings and to protect the security of airspace. Such use has thwarted numerous terrorist attacks and has been instrumental in apprehending criminals and terrorists who are operating clandestinely in the cybernetic world.



The UNGP strongly emphasizes that States have a duty not to violate human rights, including through misuse of technology provided to them. Any suspected violation should be duly investigated and States should be held to account if they are found to be responsible. The UN has a central role to play in this regard. This is one reason why the essential need for an international legal framework and sector-specific standards is clear. While the international community has not made significant progress in such efforts, we continue to stand ready to participate if requested.

Despite this lack of guidance from an international legal framework and sector-specific standards, NSO recognises fully its human rights responsibility and that it extends beyond complying with applicable domestic laws. The company has publicly endorsed and committed to implement the UNGPs and has shown leadership by being the only company in its sector to establish its own Human Rights Program. This programme is still relatively new and we realize that our industry faces very specific challenges in terms of human rights. This is why we strive for continuous improvement, including through an active engagement with external stakeholders.

In June 2021, we published NSO's first Transparency and Responsibility Report. As the first company in our sector to issue such a report, we are proud that we took a large step towards greater openness by volunteering detail about NSO's Human Rights Program to the maximum extent possible. All this notwithstanding the inherent challenges to prepare such a report, owing to our customers' critical national security considerations and our corresponding legally binding confidentiality obligations. The 32-page report includes an overview of our approach to human rights, a restatement of our commitment to respecting human rights and to engagement, detail regarding our oversight and governance structures and procedures, our assessment of NSO's salient human rights risks, an in-depth explanation of how we operationalise our commitments (including through human rights due diligence, grievance policies, and investigation of potential product misuse), a description of the regulatory oversight exercised by multiple countries, and some of our plans for the year ahead. This report was not intended as the last word on NSO's human rights work. To the contrary, we will continue to gratefully receive and carefully consider constructive feedback, and will strive to provide further disclosures whenever possible.

In this context, NSO has always welcomed engagement with the UN Special Procedures and sought guidance from them. As well as NSO's letter dated December 10, 2019 to Mr Kaye, referenced in your letter, NSO also wrote to him on June 1, 2020. We are surprised this letter is not referenced in your latest communication, particularly because our letter contained a detailed description of our human rights due diligence and investigations processes. It also contained a second invitation for the Special Rapporteur to visit NSO and discuss his concerns, a standing offer to discuss relevant matters as part of a sector-wide dialogue, and a clear request for further information regarding any steps he would see as helpful to explore industry standards within the sector following his June 2019 report. Regrettably, this letter was ignored and no response was received. We enclose a copy of this letter for your reference, and take this opportunity to renew our invitation, standing offer and request to all relevant Special Procedures.

Equally, NSO has sincerely tried to engage meaningfully with a range of stakeholders, including prominent human rights experts, civil society leaders, policy think-tanks and media organisations. Where our offer to talk has been accepted, we have typically found the conversations to be worthwhile, a good first step in building trust and, we hope, mutually instructive. Certainly for NSO the feedback has been useful, helping us to identify ways to strengthen our Human Rights Program. Partly as a result of this



engagement, in 2021-2022 the company plans to deepen its activities in certain areas, including among other things and as stated previously:

- conducting a focused impact assessment regarding the potential misuse of our products in connection with the media and journalists, a project that is already underway;
- working to devise additional potential measures to protect vulnerable populations from misuses of our products;
- evaluating potential ways to facilitate remedy for affected individuals; and
- working on identifying additional means of monitoring the use of our products beyond what is available today, including further perspectives independent of the company.

However it is a fact that that we have also often found various civil society organisations unwilling to talk to us, even where they have publicly called on us to be transparent. While this is undoubtedly their prerogative, it is an obstacle to our progress along our human rights journey and a more sophisticated common understanding of the human rights challenges facing the industry. It also slows movement towards practical solutions. Nevertheless, we will continue to try to engage, as stated in our 2021 Transparency and Responsibility Report:

*“Throughout 2021 and well beyond, we will continue to pursue and expand these dialogues with the fullest range of stakeholders, including our harshest critics. In these dialogues we have tried to be extremely transparent as evident from our extensive public correspondence with the stakeholders. We acknowledge that some organizations still refuse to engage with us, a position we regret”.*

NSO believes that positive change requires committed and consistent engagement over the medium and long term, and we hope to see this from all stakeholders in the future, including naturally all relevant Special Rapporteurs, whose expertise would provide an invaluable contribution.

### *The Report*

From our initial review of the allegations, it is apparent that there were serious deficiencies with the Report methodology and troubling errors and misleading statements in the original allegations and accompanying media coverage. For example, we stand accused of providing our products to States or State agencies that simply are not NSO clients. The so-called ‘list’ of targets – for which no details or source have been disclosed publicly – is known not to be a list of Pegasus targets or to have been taken from the Pegasus system. Prominent names given as examples drawn from that list have been verified as never having been targets infected by our technology. The number of purported targets – or possible targets – is entirely implausible based on the number of licences actually granted by NSO. NSO would never engage in a SLAPP campaign, but we would be remising our duties to the company if we do not consider possible legal recourse against blatant misrepresentations and defamation of the company.

Similarly, the original allegation – that the ‘list’ contains details of individuals “selected as people of interest by clients of [NSO]” – does not purport to implicate Pegasus or any NSO technology. The [REDACTED], a member of the Report consortium, conceded that “the purpose of the list



could not be conclusively determined” and that “it is unknown how many of the phones were targeted or surveilled”. Additionally, Amnesty wrote that they “never presented this list as “NSO’s Pegasus Spyware List”, although some of the world’s media may have done so”. This nuance and caveat have been conspicuously absent from most reporting of the allegations, resulting in coverage that, whether deliberately or not, is misleading, speculative and sensationalist.

As in other sectors and with other technologies, the risk of misuse causing human rights adverse impacts is serious. Allegations of misuse should be reported vigorously but always responsibly and based on facts. As well as best serving the public interest and victims of rights violations, accurate journalism is a key source of information for NSO’s own human rights due diligence and investigations processes.

In any event, and despite these methodological and factual shortcomings, NSO remains committed to investigating and addressing the allegations contained in the Report properly and fully, even if some of that response cannot be made public in light of legally binding national security restrictions and confidentiality obligations.

Therefore, with regard to the specific allegations made public in the Report, NSO takes these type of allegations very seriously. As mentioned, NSO immediately started to plan and execute a thorough review and investigation in response to the accusations raised, including taking advice from external local counsel in various countries and investigations professionals, in order to ascertain the extent and veracity of these claims and take appropriate action, despite the fact we received very limited information from the consortium.

NSO has previously terminated customer relationships as a result of our human rights investigations, as mentioned in our 2021 Transparency and Responsibility Report. On the basis of its past investigations raised in the Report, NSO has already suspended some customer relationships pending investigations, which are underway, and terminated other customer contracts. We have not ruled out potentially terminating further customer relationships as well as other corrective actions. NSO is able and willing to cooperate with any official State inquiry into the use of our products by any customer agency of that State, and indeed we have done so successfully in the past. NSO can also participate in any UN inquiry provided that the confidentiality restrictions mentioned above are addressed. Such cooperation could facilitate disclosure and potentially the provision of remedy by the State to any victim of human rights violations.

### *Special Procedures*

We are pleased that your letter recalled the 2019 recommendation by former Special Rapporteur David Kaye for a suitable legal and policy framework for regulation, accountability and transparency within the private surveillance industry. We agree it is essential that the UN and the broader international community should grip this issue firmly and urgently and implement this recommendation. The complex task of regulating the inherent tension between two imperative public interests – on the one hand, the fundamental duty for States to protect their national security and the safety of their citizens, and, on the other hand, their equally fundamental duty to respect, protect and promote other human rights, including



the right to privacy and freedom of expression – should not and cannot realistically be delegated to individual companies alone. Robust, effective, coherent and realistic sector-wide policy solutions are required and best developed through multilateral and multi-stakeholder collaboration. In our view, the Special Procedures are well placed to convene a multi-stakeholder initiative capable of driving forward this agenda.

For our part, our standards are higher than the export controls of most States including those of the European Union, but the same cannot be said of a number of other companies operating in our area of business. This is why NSO has repeatedly expressed our strong support for such international sector-specific standards and regulation, and we hope a dialogue aimed at delivering effective regulation can now be reinvigorated. Then-Special Rapporteur Kaye noted in his letter of February 20, 2020 that NSO's public commitment to the UNGPs differentiates the business from other companies in the private surveillance industry. Given this leadership and our practical experience establishing and working to continually improve our Human Rights Program, we believe NSO has a useful perspective and a valuable contribution to make. We are committed to doing so if given the opportunity.

We appreciate that such a dialogue with the UN Special Procedures and with UN officials regarding sector standards and regulations may be a longer-term objective. In the shorter-term, we would also welcome the UN Special Procedures' input and guidance on some challenging issues we face in implementing the UNGPs in our industry, such as on how best to define a poor human rights record when assessing States and State agencies as prospective customers, which States to consider as not having an acceptable track record of respecting international human rights, and how this assessment can be made and how and to what extent identified risks can be mitigated, including in the challenging situations when those States have known terrorists or international criminal syndicates operating within their borders.

We presume the UN Special Procedures are also engaging formally with States mentioned in the Report in respect of the allegations made, as well as with other companies in the private surveillance sector. We look forward to the UN Special Procedures reporting on this as part of an ongoing public dialogue and to demonstrate a holistic and appropriate response to the allegations made.

An open and inclusive initiative, led for example by the Special Procedures and/or the Human Rights Council, could be of particular interest and utility. We suggest that such an initiative could focus on matters including: (i) the role of surveillance and interception tools in States' national security and law enforcement operations; (ii) strategies to ensure effective access to remedy for those who have suffered an unlawful interference with their human rights through misuse of surveillance tools; (iii) the challenges of promoting transparency in an inherently secretive field of State practice and how these can be overcome; and (iv) the results of any investigations they have undertaken into the allegations in the Report. As part of any such convening, States could and should consider what confidentiality obligations they would be willing to remove, restrict or waive. This could potentially enable NSO and others to share relevant insights and experiences without breaching commitments to States or prejudicing live national security and law enforcement operations.

More broadly, NSO also believes in and welcomes a more active role for the Special Procedures, including in connection with documenting inquiries, conducting fact-finding missions to relevant States and undertaking your own investigations into allegations of human rights violations. There is scope, we believe, for the Special Procedures to make a critical contribution to the reliable gathering, assessment





and dissemination of relevant information in the timeliest manner. This would certainly aid NSO's Human Rights Program and, we suggest, strengthen scrutiny of – and human rights protection by – States in the execution of their duty to safeguard their national security and the safety of their citizens.

### *Conclusion*

We hope this response, together with our letter of June 1, 2020 (enclosed) and 2021 Transparency and Responsibility Report, help you to better understand the steps we are taking to continually improve our Human Rights Program, and address the Report that was the focus and reason for your letter dated August 4, 2021. We hope the Special Procedures will accept our renewed invitation to dialogue, engage in an open discussion regarding challenges at the intersection of technology and human rights, and attendant best practices, including as part of a sector-wide dialogue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Asher Levy", with a long horizontal stroke extending to the right.

Asher Levy  
Chairman  
for NSO GROUP TECHNOLOGIES

Enc.